

**FLORIDA BOARD OF GOVERNORS
NOTICE OF PROPOSED REGULATION AMENDMENT**

DATE: *September 30 2008*

REGULATION TITLE AND NUMBER: BOG Regulation 14.0055 Certification and Competitive Selection for Construction Management Services and Design Build Services.

SUMMARY: BOG Regulation 14.005 outlines delegated authority of a university president to permit negotiation for either construction management services or design-build services. They are also authorized and responsible for selection of contractors, management of occupation of the facility during construction, negotiation of contracts, and filing of protests.

FULL TEXT OF THE REGULATION: The full text of the proposed regulation for amendment is posted on Board of Governor's Web site at www.flbog.edu. In addition, the full text of the regulation is available upon request to the Office of the Chancellor, at (850) 245-0466.

AUTHORITY TO AMEND REGULATION(S): Section 7(d), Art. IX, Fla. Const.; BOG Regulation Development Procedure dated March 23, 2006.

THE BOARD OF GOVERNORS' OFFICIAL INITIATING THE PROPOSED AMENDMENT TO THE REGULATION: Vikki Shirley, General Counsel.

COMMENTS REGARDING THE PROPOSED AMENDMENT SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW. The comments must identify the regulation on which you are commenting:

Vikki R. Shirley, General Counsel, Board of Governors, State University System, 325 W. Gaines Street, Suite 1614, Tallahassee, Florida 32399, (850) 245-0466 (phone), (850) 245-9685 (fax), or generalcounsel@flbog.edu.

6C-14.0055 Certification and Competitive Selection for Construction Management Services and Design-Build Services.

- (1) The president may waive the requirements of ~~Rule 6C-Regulation 14.021, F.A.C.,~~ and permit negotiation of a contract for construction management services, or the president may waive the requirements of ~~Rules 6C-Regulation 14.005 and 6C-14.021, F.A.C.,~~ and permit negotiation of a contract for design-build services in accordance with ~~Rule 6C-Regulation 14.007, F.A.C.,~~ in cases determined to be in the best interest of the State.
- (2) In determining when it is in the best interest of the State to use construction management, the president shall consider:
 - (a) Whether the size of the project is sufficiently large and/or complex to require major emphasis on the qualification of the contractor to have specific expertise in performing highly specialized cost estimating, value engineering, and scheduling during the design process with continuity of construction management through both the design and construction phases;
 - (b) Whether the initial construction funding is appropriated and construction is begun with the expectation of substantial appropriations in subsequent years, thereby making it advantageous to retain a single contractor for the duration of the project;
 - (c) Whether the project is an alteration of an occupied facility which requires working around or relocating occupants while keeping the facility fully operational; or,
 - (d) Whether the project is a repair or renovation where the conditions requiring correction cannot be determined and specified without extensive contractor involvement in the removal and examination process during the design phase.
 - (e) Whether the timely completion of the project is critical to the university's ability to repay debt service or to meet grant obligations.
- (3) In determining when it is in the best interest of the State to use the design-build process, the president shall consider:
 - (a) Whether the need for the facility is significant enough to require a substantial reduction of normal delivery time, requiring an overlap of design and construction phases;
 - (b) Whether the design and construction of the facility requires minimal interface with the users; or
 - (c) Whether the project is performance-based and requires the development of a plan for life cycle cost savings and a design solution which will accomplish the savings.

(4) A Certification and Selection Committee appointed by the president shall serve throughout the selection process. The Committee shall consist of at least three members, two of which must have demonstrable experience in the selection of professional architectural or engineering services or education in construction, engineering, architecture or other related discipline ~~and no more than five members~~ and shall be comprised of the following:

(a) At least one ~~Three facilities professional from representatives of the University Facilities Office or physical plant office; the second required facilities~~ professional is not required to be a current University Facilities or Physical Plant employee

(b) ~~Up to two~~ additional members, based on the special needs of the project, if required.

(5) The project architect/engineer or the Design Criteria Consultant may attend the selection meetings in an advisory capacity, at the Committee's discretion.

(6) The Certification and Selection Committee shall determine the eligibility under Florida law of each applicant to perform the services required for the project. Each applicant determined to be eligible to provide the services for the project will be so certified by the Committee and shall be qualified for consideration as provided in this Rule. The Certification and Selection Committee shall evaluate the qualifications of all responsive applicants.

(7) For construction management projects, the Committee shall conduct discussions with, and may require public presentation by, no fewer than three applicants regarding their qualifications, approach to the project, and ability to furnish the required services. For a project having three or fewer applicants, the Committee shall conduct discussions with each applicant. The Committee shall rate each applicant on the basis of the point scale identified, and where possible, shall recommend to the president for approval no less than three applicants in the Committee's order of ranking.

(8) Design-build entities shall be selected either on the basis of qualifications or on the basis of formal design-build proposals.

(a) For qualifications-based selections, the Committee shall consider the criteria outlined in ~~Rule 6C-1~~ Regulation 4.005, F.A.C., for selection of architects/engineers, and in ~~Rule 6C-~~ Regulation 14.0055, F.A.C., for selection of construction managers, and shall follow the selection process described for construction managers.

(b) For proposal-based selections, the Committee shall request formal design-build proposals and conduct interviews with no fewer than three and no more than six applicants. For a project having three or fewer applicants, the Committee shall request formal design-build proposals from each applicant.

Applicants may be instructed to submit their design-build proposals in such a way as to maintain their anonymity. The design-build proposals shall be reviewed by the Design Criteria Consultant, who shall provide the Committee with an evaluation of code, structure, engineered systems, life-cycle cost implications, and compliance with design criteria.

The Committee shall review all design-build proposals and interview each submitting applicant. The Committee shall rate each applicant on the basis of the point scale identified.

(c) Under either selection process, the Committee shall recommend three applicants, where possible, in priority order to the president.

(9) For construction management projects, the president shall notify each applicant interviewed according to subsection ~~6C~~ Regulation 14.0055(7), F.A.C., of the president's action. For design-build projects, the president shall notify each interviewed applicant of the president's action. Any protest shall be filed in accordance with Regulation 14.023 ~~Chapter 120, Florida Statutes.~~

(10) After approval by the president, the president shall negotiate a contract in accordance with ~~Rule 6C~~ Regulation–14.007, F.A.C.

Specific Authority 240.209(1), (3)(r) FS. Law Implemented 240.209(1) FS. History New 10-17-89, Amended 9-15-91, 6-5-96, 1-13-99.